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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-707

THE SCHOOL BOARD
OF THE CITY OF DANVILLE, VIRGINIA, ET AL,
Petitioners,

v.

CHARLES L. MEDLEY, AN INFANT, BY
GRACIE MEDLEY HAIRSTON AND LEROY HAIRSTON,
HIS MOTHER AND STEPFATHER AND NEXT FRIENDS, ET AL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

G. KENNETH MILLER
THORNTON L. NEWLON
May, Garrett, Miller and Parsons
700 Building—Suite 800
Seventh and Main Streets
Richmond, Virginia 23219

EARLE GARRETT, JR.
EARLE GARRETT, III
Garrett, Garrett and Smith
824 Masonic Building
Danville, Virginia 24541

Attorneys for Petitioners

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THE SCHOOL BOARD
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners, The School Board of the City of Danville, and Zane E. Eargle, Superintendent of Schools (hereinafter referred to as the Danville School Board), pray that a Writ of Certiorari issue to review the judgments of the United States Court of Appeals for the Fourth Circuit, entered in the cases of *Charles L. Medley, an infant, by Gracie Medley Hairston and LeRoy Hairston, his mother and stepfather and next friends, et al., Appellants* v. *The School Board of the City of Danville, Virginia, et al., Appellees,* No. 72-2373 and *Charles L. Medley, an infant, by Gracie Medley Hairston and LeRoy Hairston, his mother and stepfather and*

next friends, et al., Appellees v. *The School Board of the City of Danville, Virginia, et al., Appellants,* No. 72-2374.

OPINIONS BELOW

The opinions of the Courts below preceding this Petition are as follows:

1. Opinion dated August 22, 1972, reported at 350 F. Supp. 34 (directing establishment of fifth and sixth grade centers) (appendix hereto 1a).[1]

2. Order dated August 22, 1972, unreported (directing the implementation of the plan outlined in the opinion of the same date) (33a).

3. Order of the District Court, dated August 28, 1972, unreported, (granting delay for filing of detailed plan for implementation of plan) (35a).

4. Order dated August 28, 1972, unreported, (overruling motions for rehearing and to vacate, alter or amend judgment) (37a).

5. Order dated October 4, 1972, unreported (approving plans for implementation of opinion and charts filed therewith) (39a).

6. Memorandum, opinion and order dated October 24, 1972, reported at 350 F. Supp. 34, 53 (granting motion for stay) (43a).

7. Opinions of the Court of Appeals dated August 3, 1973, unreported, (reversing the District Court) (52a).

8. Judgments of the Court of Appeals dated August 3, 1973, unreported (62a and 63a).

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[1] The appendix of opinions below is printed in a separate volume because of its length.

9. Order of the Court of Appeals dated August 14, 1973, unreported, (denying motion that mandate issue forthwith) (64a).

10. Order of the Court of Appeals dated September 12, 1973 (denying petition for rehearing *in banc*) (65a).

11. Order of the Court of Appeals dated October 11, 1973, unreported, (denying motion for stay of mandate) (66a).

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

The judgments of the United States Court of Appeals sought to be reviewed was entered on August 3, 1973. The Petition for Rehearing *In Banc* was denied on September 12, 1973. Jurisdiction to review the judgments in question by Writ of Certiorari is conferred on the Supreme Court of the United States by 28 U.S.C. § 1254.

QUESTIONS PRESENTED

1. Where the Danville School Board had, voluntarily and prior to the bringing of any action against it, accomplished perfect racial balance at the high school level, near racial balance in the junior high schools, at least twenty percent white students in each of the elementary schools, equality of facilities, complete integration of faculty and administrative staffs, and no discrimination in extra-curricular activities, were the Courts below in error in failing to hold the system unitary?

2. Did the Circuit Court err in reversing the District Court's finding that the system would be unitary with improvements in the fifth and sixth grades?

CONSTITUTIONAL PROVISION INVOLVED

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The statement of the case will be divided into subject matters.

Geography and Demography

The City of Danville is located in southern Virginia and is divided by the Dan River. For many years, a substantial portion of the black population of Danville has been concentrated on the south side of the Dan River within a "horseshoe" formed by the river. Since World War II, three federally funded housing projects have been built within or near the "horseshoe". These projects have attracted large numbers of black families and have increased the concentration of black students in that area of the city. (350 F. Supp. at 43-44, 14a).

History of the Danville System

The assignment of students in the Danville School system has traditionally been based upon geographical location.

The Danville School Board does not operate a bus system and elementary students have not crossed the Dan River unless there were some exceptional circumstances. The schools in the Danville system, except the Bonner Junior High School, were built according to population demands, Bonner was located to aid in desegregation.

Black students were admitted to formerly all white schools in Danville in 1963. In 1965, a freedom of choice plan was adopted, and implementation of that plan was completed during the 1966-67 school year. (350 F. Supp at 41, 8a).

In 1965, a Head Start program was initiated, and in 1967 an ESEA Title I summer project was instituted. Pupils and teachers were assigned on a non-discriminatory basis in these programs. (350 F. Supp. 39, 5a).

In 1968, the Danville School Board submitted, and in 1969 the Department of Health, Education and Welfare (hereinafter referred to as HEW) approved, a plan which provided for geographical zoning of five elementary schools and expansion of faculty integration. At the suggestion of HEW this plan was modified in 1970. Under the plan as modified all elementary schools were zoned and some were paired. Following the implementation of this plan, a team consisting of members of the Staff of Region III, Office of Civil Rights (HEW) visited Danville and found the implementation of the plan to be satisfactory. As a result, Dr. Eloise Severinson, Director, Region III, Office of Civil Rights, informed the Superintendent of the Danville schools that:

> "... it thus appears that you have carried out the provision of the desegregation plan for 1970 ... We appreciate the leadership shown by you and your school board."

(350 F. Supp. at 41, 8a-9a).

However, in July of 1971, Dr Severinson informed the Superintendent that in view of the *Swann* decision the plan for the Danville schools should be reviewed. In response the Danville School Board altered the attendance area of the Woodberry Hill Elementary Schools, and on July 29, 1971, Dr. Severinson suggested additional changes. (350 F. Supp. at 41, 9a-10a).

Proceedings in the Courts Below

On July 30, 1971, probably before the letter of HEW, dated July 29, 1971, was received, this suit was filed in the United States District Court for the Western District of Virginia, Danville Division, by Charles L. Medley, et al, against the Danville School Board. (350 F. Supp. at 41, 10a). Jurisdiction was invoked under 28 U.S.C. §§ 1331 and 1343 and under 42 U.S.C. §§ 1981 and 1983. On June 8, 1972, Judge H. Emory Widener, Jr., of the United States District Court for the Western District of Virginia, directed the Danville School Board to seek assistance from HEW in improving the present plan, but HEW did not reply to the request. (350 F. Supp. at 41, 10a).

Following several hearings held by the Court with counsel and experts from the school system and School Board, it was agreed that the case would be submitted on the basis of the admissions of record and stipulations of fact with the understanding that counsel could submit additional evidence. (350 F. Supp. at 36, 1a). The defendants filed several affidavits, and the matter was submitted to the Court by brief. It was agreed that grades seven through twelve were desegregated and that there was desegregation as to faculty and administration throughout the system. (350 F. Supp. at 39-40, 5a-7a).

On August 22, 1972, the District Court rendered its opinion and ordered the creation of fifth and sixth grade centers for the children on each side of the river but otherwise held the Board had completely desegregated the system. The Court declined, because of safety considerations, to adopt a plan which would require elementary school students to cross the Dan River. The Court found the problem created by the division of Danville by the Dan River was reinforced by dangers from heavy commerical development on both banks of the river and by Riverside Drive, Route 58, which runs roughly parallel to the north side of the river. The Court also found the five bridges across the river cannot be considered safe for pedestrian use because of heavy traffic, adjacent east-west thoroughfares or lack of walkways or abutting sidewalks. (350 F. Supp. 44-45, 49; 15a-17a, 24a).

Both the plaintiffs and defendants filed motions to alter or amend the judgment but both motions were overruled. In October, 1972, the District Court entered an order approving in part and modifying in part the School Board's plan for implementing the Court's order. The plaintiffs filed a notice of appeal on October 4, 1972, and the defendants subsequently filed a notice of cross-appeal. The District Court granted a stay pending appeal. (350 F. Supp. at 53-54, 57; 37a, 39a, 43a, 44a, 51a).

The United States Court of Appeals for the Fourth Circuit heard argument on the appeal and cross-appeal in March, 1973, and rendered its opinion on August 3, 1973. (52a). The Fourth Circuit upheld the decision of the District Court that further desegregation was required in Danville but held the District Court had given inadequate consideration to the use of bus transportation and split zoning. (52a).

A petition for rehearing *in banc* was denied on September 12, 1973, and the motion for stay of mandate was denied on October 11, 1973. (65a, 66a).

REASONS FOR GRANTING THE WRIT

Counsel for the Petitioners assert they do not believe this Court has been faced with a factual situation similar to the facts in this case. One which is similar has been decided with a contra result by the Circuit Court of Appeals for the Sixth Circuit. This is a case involving a school board which conscientiously attempted to comply with the constitutional duties as defined by the Federal courts. Only nine months before this action was filed, the Danville Board had been commended by HEW for its "leadership" in desegregation. Throughout the argument, counsel will attempt to show this Court that the School Board in this case voluntarily and *before any* action was filed against it had accomplished the following:

1. Complete integration of faculty in all schools.

2. Complete integration of administration.

3. No discrimination as to facilities.

4. No discrimination as to extracurricular activities.

5. Combined the former two high schools into one high school for all students resulting in perfect integration for high school students.

6. Built one junior high school and adjusted lines resulting in near racial balance in the junior high schools.

7. Adjusted school zones for elementary schools so that each elementary school had at least 21% white students.

This was accomplished despite the presence of three fed-

erally funded housing projects in an area that attracted black families.

The position of counsel is that the Danville School system is a unitary system when measured in the light of the decisions of this Court establishing:

1. That all current factors including racial composition of the student body, faculty integration, administrative integration, equality of facilities, equality of extracurricular activities and the community and administration attitudes must be considered in determining if there is a unitary system. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 18 (1971). *Keyes* v. *School District No. 1, Denver, Colorado*, ... U.S. ...., 93 S. Ct. 2686, 2691 (1973).

2. That every school in a school system need not reflect the racial composition of the school district as a whole in order for the school district to be unitary. *Swann, supra* at 24.

The Decision Of The Court Of Appeals For The Fourth Circuit In The Case At Hand Is In Conflict With A Decision Of The Court Of Appeals For The Sixth Circuit In A Strikingly Similar Case.

The United States Court of Appeals for the Sixth Circuit has affirmed the decision of the District Court in *Goss* v. *Board of Education of Knoxville*, 340 F. Supp. 711 (E.D. Tenn. 1972); *aff'd*, Nos. 72-1766, 72-1767 (6th Cir. March 29, 1973) *aff'd in banc* (6th Cir. July 18, 1973) *petition for certiorari filed* No. 73-661 (October 16, 1973). These decisions reach a result contrary to the result in the case at hand in a strikingly parallel factual situation.

The Knoxville system had been held unitary in 1967. Another Court action was brought in 1969 and the system was again sustained. On appeal, the case was remanded for the District Court to consider the Supreme Court's mandate in *Swann* v. *Charlotte-Mecklenburg Board of Education, supra.* The District Court made exhaustive findings of facts on remand. It considered geographical features such as a river which divided the City. The traffic flow within the City, the location of the interstate highway, and other factors making transportation difficult were also discussed. Most importantly, the Court considered the residential housing patterns in great detail.

The plaintiffs advanced a plan which would provide for nearly the same percentage of black students in every school. They contended that since the Knoxville system was 16.5 percent black, every school should be between 10 percent and 30 percent black, but, as in the case at hand, the District Judge held their plan to be impractical (350 F. Supp. at 49; 24a).

The District Court held the system was unitary despite the fact that in the 1971-72 school year, sixteen of sixty-four schools were all white and several of the schools were nearly all black. The Court pointed out that *Swann* does not require a particular racial mixture in each school, and concluded that disproportionate racial mixtures in some of the schools of Knoxville were the result of residential segregation for which the School Board could not be held responsible.

On appeal to the Sixth Circuit, first a panel of Circuit Judges and then the Court *in banc* refused to set aside the findings of the District Court.

Your Petitioners respectfully contend that the apparent conflict between the Circuits in these cases raises serious questions which should be resolved by this Court.

This Case Presents Serious Questions Regarding The Definition Of A Unitary School System

In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. at 24 (1971) this Court said:

> If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

If these words are to have any meaning at all, the Danville School system must be held unitary. When this suit was brought against the Danville School Board, the School Board was not operating a single all black school. There were no majority black secondary schools and *every elementary school pupil attended a school where the student population was at least twenty-one percent white.*[2] Thus, the current situation in Danville at the time the suit was brought was that the student body of every Danville school had been meaningfully desegregated *in good faith without any Court action.*[3]

This Court has repeatedly emphasized that other factors besides student ratios must be taken into account in deter-

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[2] The current situation is revealed by reference to charts showing 1970-1971 composition of schools, the suit having been brought within sixty days from the end of that school year and before the 1971 session.

[3] In *Keyes*, *supra* at 2693 this Court made it clear that the burden is on the plaintiffs to "prove that a current condition of segregated schooling exists within a school district where a dual system was compelled or authorized by statute at the time of our decision in *Brown* v. *Board of Education* . . ."

mining if a school system is still segregated. In *Swann* the Court said:

> "In *Green* we pointed out that existing policy and practice with regard to faculty, staff, transportation, extracurricular activities, and facilities were among the most important indicia of a segregated system."

Id., at 18. Similarly in *Keyes* v. *School District No. 1, Denver, Colorado,* ..... U.S. ....., 93 S. Ct. 2686, 2691 (1973) this Court said:

> "What is or is not a segregated school will necessarily depend on the facts of each particular case. In addition to the racial and ethnic composition of a school's student body, other factors such as the racial and ethnic composition of faculty and staff and the community and administration attitudes toward the school must be taken into consideration."

When these other factors are taken into account the unitary character of the Danville system becomes even more apparent. The District Court found that the faculty in each of the Danville schools was "assigned on an almost completely mathematically precise basis . . ." (350 F. Supp. at 39, 5a). The plaintiffs conceded that the administrative staff was desegregated. (350 F. Supp. at 40, 7a). The extracurricular activities in the schools were desegregated, and the plaintiffs have not contended otherwise. (350 F. Supp. at 39, 5a). Furthermore, this progressive School Board operates a fully desegregated Head Start program and summer school program. The Danville Board has not and does not operate a transportation system.

There is a further factor which should be considered in determining if the Danville system is unitary. That factor

is the attitude of the members of this School Board and their predecessors in office. With each interpretation of the constitutional mandate this School Board has moved to comply and made Court intervention unnecessary. Black students were admitted to formerly all white schools in Danville without a Court order ten years ago. With the advent of freedom of choice the School Board adopted a plan similar to that in *United States* v. *Jefferson County Board of Education,* 372 F.2d 836 (5th Cir. 1966), even before that decision was handed down. Such plans were approved in the Fourth Circuit until this Court's decision in *Green* v. *County School Board of New Kent,* 391 U.S. 430 (1968). *Bowman* v. *County School Board of Charles City County,* 382 F.2d 326 (4th Cir. 1967).

Immediately after the *Green* decision the Danville Board adopted a new plan which received HEW approval. This plan was modified to promote desegregation in 1970. The Board was commended by HEW for its "leadership" in taking these actions.

After the *Swann* decision and even after this suit was brought, the School Board continued to make changes in its plan to promote racial balance. But the Danville Board has rightly concluded that the language of *Swann* does not require a School Board which has already produced substantial integration in every one of its schools to engage in cross town busing at the expense of quality education and the abolition of neighborhood elementary schools. Thus, there is nothing in the history of this School Board which indicates that it is not morally committed to the principle of desegregation or that it will not continue to take affirmative action to produce meaningful desegregation.

The Court's attention is directed to the District Court's finding that with improvements in only the fifth and sixth

grade percentages, the last vestiges of segregation would be eliminated. By referring to the charts in the Appendix, pages 67a-85a, it may be seen that in the 1970-71 school year (which was the last year of operation before this suit was filed), there was a total of 1576 fifth and sixth grade students in the Danville system. Also, there were only two schools with a majority of black students in these two grades. Gibson was 73% black in the fifth grade (30 white and 79 black) and 78% black in the sixth grade (21 white and 75 black). Westmoreland was 70% black in the fifth grade (27 white and 78 black) and 67% black in the sixth grade (37 white and 73 black). If fifty-one white students could have been found in the Gibson-Westmoreland neighborhoods to replace fifty-one black students in the fifth grades in these schools and forty-five white students could have been found in the same neighborhood to replace forty-five black students in the sixth grade there would have been a majority of white students in the fifth and sixth grades in every school in Danville and under the District Court's holding the entire system would have been unitary. The issue which this Court should consider is the impact upon other school districts of this finding. How can it be said that because ninety-six white students were not available in these two school zones to replace ninety-six black students, that the system is not unitary? This is particularly true when there are 1576 students in the fifth and sixth grades and 9,800 in the whole school system. It is truly the tail wagging the dog when a 6.1% shift in two grades (or less than one percent of all students) would make a majority of white fifth and sixth graders in all schools and a system is condemned because those few replacements were not available.

The question may then be asked, why was not such a shift made. It is recognized that if 359 white elementary stu-

dents could be found to replace black students in the areas where the black students were a majority, that all 4882 elementary students would have been attending schools where white students were in the majority (See 1971-1972 figures in chart of District Court's judgment of August 22, 1972, replacing 115 black students at Gibson with white, 80 at Grove Park, 84 at Berkeley and 80 at Westmoreland (350 F. Supp. at 42, 11a-12a)). The answer is twofold. It was felt that the interests of all students in the elementary grades could best be served by retaining the neighborhood concept for young children and that the quagmire of busing with a resulting loss of white students to private schools and parent support for elementary programs was not justified for a shift of 7+% of all elementary students. Secondly, while the Board felt the District Court's finding was error and that its judgment in this respect was correct, its reluctance to appeal and its desire to cooperate with the Court was so great, it did not cross-appeal until an appeal had been filed by the plaintiffs.

The plaintiffs and the Court of Appeals have relied heavily on this Court's opinion in *Davis* v. *Board of School Commissioners of Mobile County,* 402 U.S. 33 (1971) to support their argument that the Danville School Board was not justified in treating the north and south sides of the Dan River separately. However, the *Davis* case is clearly distinguishable from the *Medley* case because the School Board in *Davis* was engaged in an obvious sham, while the Danville Board was faced with a geographical reality which it was entitled to consider. In the *Davis* case the geographical division was only a highway. In the case at hand the division is a river which is buttressed by heavy commercial development on both banks across most of the city as well as by a major highway. The District Court personally viewed the scene and concluded there was no safe crossing

for pedestrians. (350 F. Supp. at 43-45, 49-50; 15a-17a, 24a-26a). It is apparent the District Court considered the river barrier justified the Danville Board in treating the two sides of the river independently at the elementary level because the plan which the District Court adopted also did so. (350 F. Supp. at 50-51, 25a-27a). Additionally, the School Board in *Davis* could not justify its treatment of a highway as a barrier since it already operated 200 school buses, 402 U.S. at 35. The Danville Board does not operate a school bus system.

Furthermore, the School Board in *Davis* was a recalcitrant School Board which had ignored previous Court directives and which was using the highway as a mere excuse for maintaining a school system which was obviously segregated. Indeed, even under the District Court's plan in *Davis,* there were seven all black junior or senior high schools and twelve all black or nearly all black elementary schools serving ninety percent of the black elementary students. As pointed out above, each of the secondary schools in Danville exhibit near racial balance and every elementary school was found to be at least twenty-one percent white.

In *Keyes, supra* at 2695 this Court pointed out:

> "This is not to say, of course, that there can never be a case in which the geographical structure of or the natural boundaries within a school district may have the effect of dividing the district into separate, identifiable and unrelated units. Such a determination is essentially a question of fact to be resolved by the trial court in the first instance, but such cases must be rare."

In the case at hand a school board, which does not operate a school bus system, made a rational and nondiscriminatory choice that it would not force elementary school children to take unsafe routes to school, and this

decision was ratified by the District Court. It is important that courts recognize the good faith efforts of a conscientious board acting in the best welfare of all children.

Mr. Justice Powell has proposed a test for determining whether a school system is unitary. This test represents a careful "balancing of the individual and collective interests", *Swann, supra* at 16, within the framework of the guidelines laid down in the previous decisions of this Court. The test proposed in *Keyes, supra,* is as follows:

> "A system would be integrated in accord with constitutional standards if the responsible authorities had taken appropriate steps to (i) integrate faculties and administration; (ii) scrupulously assure equality of facilities, instruction and curricula opportunities throughout the district; (iii) utilize their authority to draw attendance zones to promote integration; and (iv) locate new schools, close old ones, and determine the size and grade categories with this same objective in mind . . . A school which happens to be all or predominantly white or all or predominantly black is not a "segregated" school in an unconstitutional sense if the system itself is a genuinely integrated one."

93 S. Ct. at 2706 (Justice Powell concurring in part and dissenting in part).

The Danville School system meets this test. As discussed above, the Danville system provides integrated faculties, administration and extracurricular activities within equal facilities. No contention has been made that the instruction and curricular opportunities are not equal through the system.

The Danville Board has drawn attendance zones to promote maximum integration. The District Court found that:

> "It should be particularly noted that the school board, having taken into consideration physical barriers, boundaries, and other such factors, drew the attendance zones on a geographical basis in order to affectuate a neighborhood school system. Examination of a map, which shows the residences of all white and Negro students in Danville, as well as the elementary attendance zones, demonstrates that these zones have not been drawn in order to maintain segregated schools or to hinder desegregation. For example, Taylor previously was an entirely black school and now is a predominately white school. *Rather, it appears that if any consideration has been given to race in the formulation of these zones, the school board has considered race only in order to achieve racial balance within the zones while adhering to the neighborhood school concept.* The Stonewall Jackson attendance zone, as an instance, is a narrow zone which extends approximately three-fourths of the way down the north-eastern border of the city. The northern portion of this zone is almost exclusively white and the bottom portion is nearly all black. While the configuration of this zone facilitates the safety and ease of student transportation, as U.S. Route 29 is the western border of this zone, it also accomplishes the creation of a zone that closely approximates the black-white ratio of the student population on the northern side of the city. For the 1970-1971 school year, attendance zones were created to accommodate the pairing of Berkeley, a predominately white school in 1969-1970, with Westmoreland, an all-black school in 1969-1970. Also, in 1971, the Woodberry Hills attendance zone was altered to halt the decline in black enrollment at that school."

[Emphasis supplied].

(350 F. Supp. at 43, 13a). Finally, in light of this Board's past history there is no indication that it will not locate new

schools and close old ones with the objective of promoting integration.

The Danville Board urges this Court to adopt the above test as the consequences of doing otherwise are likely to be harmful to all children, regardless of race. It further urges this court to sustain the Petitioner's position that the system was unitary.

The Court Of Appeals For The Fourth Circuit Erred

The decision of the Appellate Court reversed the finding of fact of the District Court. The District Court had been thoroughly briefed on the situation and had personally visited the schools and areas involved. This decision can only be interpreted as requiring busing to attain a racial balance of students in line with the plaintiff's claim that the percentage of each race in each school must be a majority white and more nearly approximate the overall composition of the races in the system. The School Board believes this is an error that should be considered by this Court.

Petitioners believe that all would readily concede that cross town transportation of elementary students will be necessary to produce greater racial balance in the Danville schools. This will necessarily mean the end of the neighborhood school concept in Danville. This is not an isolated instance of such a problem. If this Court allows the Circuit Court decision to stand in a situation where a School Board had voluntarily and affirmatively acted in good faith to comply with the duty to integrate, other school boards will necessarily draw the conclusion that busing to achieve a near racial balance is essential to a unitary system. Other school boards will be forced to this conclusion because in the Danville case, despite the clear finding of necessity of avoiding crossing the Dan River for elementary students and

the other findings of facts of the District Court, the Circuit Court reversed the lower Court and directed a study of all grades including junior high schools *where the parties below had stipulated and the District Court found that integration had been completed.*

The Danville School Board does not urge the adoption of a rule which would make the walk-in school sacrosanct. There are undoubtedly school systems where meaningful desegregation can only be accomplished by non-contiguous pairing and zoning and the attendant transportation of students. However, in school districts where there is meaningful desegregation without the use of such tools, the courts should consider the advantages of the neighborhood school in refining the definition of a unitary school system. To abolish the neighborhood school system is to risk the counterproductive result of still wider racial separation. *Keyes, supra* at 2718 (Justice Powell concurring in part and dissenting in part). In a school district where there is already substantial desegregation in every school, the doubtful possibility that cross town transportation would provide any advantage to the children is simply not worth this detriment.

More importantly, a neighborhood school system promotes a number of affirmative values which any plan involving transportation will destroy. The advantages of a neighborhood school system have been more adequately and eloquently explained elsewhere, *Keyes, supra* at 2715-2719 (Justice Powell concurring in part and dissenting in part); *Deal* v. *Cincinnati Board of Education,* 369 F. 2d 55, 60 (6th Cir. 1966), but basically, the advantages are minimization of safety hazards, economy of costs, ease of administration and better home-school communication.

The decision of the Circuit Court in this case is in contravention of the balancing of equities approach generally

taken by the Court in desegregation matters, and it completely abrogates the discretion normally given to the trial judge in an equity proceeding to do such balancing of interests. See *Swann, supra* at 28, 31. The results will be a loss of funds now expended for quality education, increased enrollment at private schools, a white flight from the City and a cycle of more busing, a loss of many white and colored students whose presence in the classrooms acted as pacesetters for quality education, and the loss of parent support for the elementary neighborhood school. The price is too great for the small increases in percentages to be attained.

CONCLUSION

The Danville School system was fully desegregated without any court action before the plaintiffs filed the action in question here. At the time this action was filed, there was perfect racial balance in the high school, near racial balance in the junior high schools, and substantial integration in every elementary school. There were only four majority Negro elementary schools and each of those schools had at least twenty-one percent white students. Furthermore, there was equality of facilities and complete integration of faculties, administrative staff and extracurricular activities. This commendable system was achieved without court order in a metropolitan area with serious problems of residential segregation brought on, at least in part, by the location of federally funded housing projects. This Court has stated in the past that every school in every school district does not have to have perfect racial balance and that other factors besides racial proportions should be considered in determining if a school system is unitary.

Even if the system were not unitary, the Fourth Circuit was in error in reversing the District Judge. The practical

effect of the Fourth Circuit's decision is to tell the District Judge to bus and to bus until perfect racial balance is achieved unless the time and distance involved represents a health hazard to the children of the particular age group being bused. While the position of your Petitioners is that the system was unitary, they say the Circuit Court was in error in reversing the other findings of the District Court, which carefully reviewed the stipulations submitted by the parties, conferred many times with counsel and the representatives of the Board qualified to advise on the matters in issue, studied the many exhibits filed and personally drove around the district to view the geographical, demographical, and physical facts involved.

For the reasons stated, the School Board of the City of Danville respectfully submit that the Petition for Certiorari should be granted to review the judgments of the United States District Court and the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

G. KENNETH MILLER
May, Garrett, Miller and Parsons
700 Building—Suite 800
Seventh and Main Streets
Richmond, Virginia 23219

Counsel for the Petitioners